

Terrace Gardens

A Senior Housing Community for the
City of Milpitas

Board of Directors

Richard Ruth- President, Executive Agent- Lockheed Martin (Retired)

Andrew La- Vice President, Attorney & CPA

Dolores Hovey- Secretary/Treasurer, (Retired)

Lucy Carlton- Chief of Police (Retired)

Steve Tao- Real Estate

Robert Yen

Debbie Giordano- Milpitas City Council

Charles Lawson- Chief of Police, Milpitas (Retired), Acting Milpitas City Manager

Jerry Rosenquist- Controller-VTA (Retired), CPA

**We would Like to thank the City of Milpitas
for**

- **Its wisdom in 1987 to have created
Terrace Gardens**
- **For the recent generous CDBG Grant of
\$150,000 towards the roof replacement
cost of \$464,000**
- **For allowing us the opportunity to present
this plan for continued protection of
affordable housing for the seniors of our
community**

Request to Approve The Amended and Restated Regulatory Agreement for Terrace Gardens

Presented by: Mari Tustin

Senior Vice President, The John Stewart Company

Research and Analysis

By Terrace Gardens Board of Directors

- 1. Established a Finance Committee**
- 2. Obtained an Independent five year financial “Look-Back” Study of Terrace Gardens with recommendations for forward changes including those presented tonight**
- 3. Obtained a new independent study regarding the adequacy of Terrace Gardens Reserves**
- 4. Established a Food Service Committee, and conducted multiple resident surveys, confirming very high level of satisfaction and residents’ desire to retain the mandatory meal program**

Purpose of Revisions

1. To establish and protect permanent affordability restrictions
2. To create long term financial stability for Terrace Gardens
 - 2a. From 1989 - 2006 average rents increased from \$348 to \$542 per month (55%)
 - 2b. Expenses increased 115% over the same period of time

Material Revision #1

1. Replacement and Operating Reserves

1a. Requires Board of Directors to establish adequacy of reserve funding through periodic capital needs assessments or reserve studies

1b. Links annual operating budget and necessary reserve funding

Material Revision # 2

- 2. Establishes and protects permanent affordability criteria and codifies the methodology
 - 2a. Base “affordability” using the model of the Low Income Housing Tax Credit Program (As used for De Vries Place)
 - 2b. 111 Units (75%) reserved for Very Low Income Residents (at or below 50% of Area Median Income-\$37,150 One Person)
 - 2c. 37 Units (25%) reserved for Extremely Low Income Residents (30% of Area Median Income-\$22,275 One Person)

What This Means For Terrace Gardens

2006 Low Income Tax Credit Rents

Highest	Maximum Allowable Rent
50% AMI*	\$995

Lowest	Maximum Allowable Rent
30% AMI*	\$600

* AMI = Area Median Income

Current Rents At Terrace Gardens

Highest

	Rent Range	Meals	Total
33 Residents (24 Sec. 8 Vouchers, 9 other)	\$786	\$174	\$960

Incoming Residents 2004-2006 (Flat Rate)

31 Residents	\$531	\$174	\$705
to	\$630	\$174	\$804

• Middle (30% of Household Income)

38 Residents	\$375	\$174	\$549
to	\$678	\$174	\$852

Lowest

46 Residents	\$368	\$174	\$542
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Effect on Terrace Gardens In 2007

Highest	Projected Rent Range	Estimated Meals *	Total
No Increase	\$786	\$179	\$965

Incoming Residents 2007 (Flat Rate)

Increase of \$10/ mo	\$640	\$179	\$819
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Middle (Change to Flat Rate)

Increase of \$0-\$32/ mo (Incr. Not to Exceed 5%)	\$394	\$179	\$573
To	\$678	\$179	\$819

Lowest

Increase \$8/ mo	\$375	\$179	\$554
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* 3% Estimated Meal Increase in 2007 Per Contract

Summary and Conclusion

1. These proposed changes, after 22 months of study and review, have been approved by the Board of Directors of Terrace Gardens Inc. They also have been reviewed and approved by legal counsels for the City of Milpitas and Terrace Gardens Inc.
2. We have also received extensive guidance and assistance from the City's Principal Housing Planner, Felix Reliford.

Summary and Conclusion

3. These changes will accomplish our stated goals
 - 3a. Establish, protect, and restrict permanent affordability guidelines
 - 3b. Create long term financial stability for Terrace Gardens
4. Without these proposed changes in rent structure and reserve funding Terrace Gardens will not be able to sustain independent financial stability

WHEN RECORDED RETURN TO:

City of Milpitas
Attn: City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035

AMENDED AND RESTATED REGULATORY AGREEMENT
(Terrace Gardens)

THIS AMENDED AND RESTATED REGULATORY AGREEMENT (this "Agreement") dated as of _____, 2006, by and between Terrace Gardens, Inc., a California nonprofit public benefit corporation (the "Owner"), and the City of Milpitas, a municipal corporation, (the "City").

WITNESSETH:

WHEREAS, the City adopted the Milpitas Redevelopment Plan pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.* establishing the Milpitas Redevelopment Project Area (the "Project Area"); and

WHEREAS, the Owner has developed a one hundred fifty (150) unit rental housing project known as Terrace Gardens (the "Project"), located in the Project Area in the City of Milpitas, County of Santa Clara, California, on the property described in Exhibit A attached hereto ("Property"), which Project has been continuously in operation since May of 1989; and

WHEREAS, the entire capital cost of the Project was funded by the City acting by and through its Redevelopment Agency from the Tax Allocation Bond Issue of 1985; and

WHEREAS, the Property upon which the Project was constructed was owned by the City; and

WHEREAS, said Property was conveyed by the City to the Owner by Grant Deed executed and recorded concurrently with the original execution and recordation of the original Regulatory Agreement; and

WHEREAS, as a condition of the City's assistance, the City and the Owner entered into a Regulatory Agreement dated November 17, 1987, and recorded in the Official Records of Santa Clara County against the Property on January 28, 1988 (the "Original Regulatory Agreement"); and

WHEREAS, the City has monitored the Owner's compliance with the Original Regulatory Agreement; and

WHEREAS, the rent and occupancy restrictions in the Original Regulatory Agreement were effective for a term of fifteen (15) years, which term has been completed; and

WHEREAS, Owner and Agency desire to enter into this Agreement in order to restrict occupancy to very low and extremely low income senior households at affordable rents for a term of fifty-five (55) years pursuant to California Health and Safety Code Section 33334.3(f); and

WHEREAS, the City and the Owner desire to ensure that the Project remains financially feasible.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

Section 1. Permitted Use.

The Property shall be utilized only for the purpose of operating 150 units of rental housing for senior citizens and related or incidental purposes, and for no other purposes.

Section 2. Prohibition Against Encumbrances.

Notwithstanding anything to the contrary herein, Owner may not encumber its interest in either the Property or the Project by deed of trust, mortgage or any similar security device without first obtaining the prior written consent of the City.

Section 3. Prohibition Against Sale or Assignment.

Owner shall not have the right to sell, convey, assign, or otherwise transfer its interest in either the Property or the Project without first obtaining the prior written approval of the City.

Section 4. Compliance with Law.

Owner agrees, at its sole cost and expense to comply with and secure compliance with all of the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the operations of the Project, and to observe faithfully and secure compliance with, in the use of the Project, all applicable municipal ordinances and state and federal statutes now in force or which may hereafter be in force. Owner agrees to pay, prior to delinquency, all taxes, assessments, and fees assessed or levied upon Owner, the Property, or the Project, including any building, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained on the Property or by reasons of the business or other activities upon the Property or in connection with the Project.

Section 5. Construction.

The Owner constructed the Project in compliance with City requirements. Construction of the Project was completed in May of 1989, as evidenced by a certificate of occupancy for the Project issued by the City in May of 1989 ("Certificate of Occupancy").

Section 6. Indemnity.

Owner shall indemnify, defend (with counsel approved by Agency) and hold Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's development, sale or ownership of the Project, or Owner's performance or nonperformance under this Agreement. Owner's indemnification obligations under this Section 6 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6 shall survive the issuance of the Certificate of Occupancy for the Project, the expiration or earlier termination of this Agreement and the release of the Property or any part thereof from the burdens of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Owner that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Owner, of any of the insurance policies described in this Agreement.

Section 7. Insurance Coverage.

(a) So long as Owner retains title to the Property, the Project and the improvements thereon, Owner agrees to procure and maintain public liability insurance at its sole cost which names the City as an additional insured, with an insurance company or companies licensed to do business in California, to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from the operation of the Project, any act or activities of Owner, its sublessees or any person acting for Owner or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Owner or its sublessees, or any person for Owner, or under its control or direction. Said insurance shall be primary insurance. Such public liability and property damage insurance shall also provide for and protect City against incurring any legal cost in defending claims for any alleged loss. Said insurance shall cover and include the Indemnification provisions set out in Section 6 herein. Such public liability and property damage insurance shall be maintained in full force and effect at all times with a combined single limit of not less than \$5,000,000. Owner agrees to submit a policy of said insurance or certificate evidencing the existence thereof to the City indicating full coverage of the contractual liability imposed by this Agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days' prior written notice thereof to City. If the operation of the Project by Owner results in an

increased or decreased risk, in the reasonable judgment of the City, then Owner agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City. Owner agrees that provisions of this Section 7(a) as to maintenance of insurance shall not be construed as limiting in any way the extent to which Owner may be held responsible for the payment of damages resulting from the Owner's activities, the activities of its sublessees or the activities of any person or persons for whom Owner is otherwise responsible.

(b) Owner also agrees to procure and maintain during the entire term of its ownership of the Project, a policy of fire, extended coverage and vandalism insurance on the Project and all permanent property of an insurable nature located upon the Property. Said policy shall name the City as an additional insured and shall be written by an insurance company licensed to transact business in the State of California, and shall be in an amount sufficient to cover the insurable value of the Project as determined by the City. Owner agrees to submit a certificate of said policy to the City. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days' prior written notice to City by the insurance company. Owner agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to City and Owner and said proceeds shall, subject to the terms of any mortgage encumbering the Project, and be payable into a trust fund to be reinvested in rebuilding or repairing the damaged property.

(c) In the event of damage or destruction to the Project and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be used to restore the premises to a neat, clean and safe condition. The balance of the proceeds of such insurance policy shall be either paid directly to the City or disbursed in accordance with instructions from the City.

(d) Owner shall procure and keep in force in form and coverage reasonably satisfactory to City: (a) boiler and machinery insurance if at any time or from time to time such equipment is located on the premises; (b) other insurance, in amounts from time to time reasonably required by City, against other insurable risks, if at the time they are commonly insured against for premises similarly situated and containing comparable improvements.

(e) Owner agrees to increase the limits of liability when the value of the improvements covered is increased, subject to the availability of such insurance at such increased limits.

(f) Owner agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the Project premises, buildings and appurtenances.

(g) If Owner fails or refuses to procure or to maintain insurance as required by this Agreement or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right but not the obligation, at City's election and without notice, to procure and maintain such insurance. The premium paid by City shall constitute an obligation of the Owner to the City and shall be

payable upon demand. The failure of Owner to make said payment shall constitute a default under Section 25 of this Agreement.

Section 8. Maintenance.

Owner agrees to assume full responsibility for the operation and maintenance of the Project. Owner agrees to maintain and preserve the Project and any improvements thereon in a decent, safe, healthy and sanitary condition and in compliance with all applicable laws. Owner agrees to perform any repairs and replacements necessary to maintain the Project in such condition and in a manner satisfactory to City. Owner agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with the Project.

Section 9. Nondiscrimination.

Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Project shall contain the following language:

(i) In Deeds:

"Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there are no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(ii) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, executors, administrators and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the

condition that there are no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(iii) In Contracts:

"There are no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

Section 10. Utility Costs.

Owner agrees to order, obtain and pay for all utilities and services and installation charges in connection with the Project, excluding individually metered electrical service, and telephone and cable service, which shall be paid by Project residents.

Section 11. Waste, Damage or Destruction.

Owner agrees to give notice to City of any fire or other damage that may have occurred on the Property within ten (10) days of such fire or damage. Owner agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Project clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to City. If the Project shall be damaged by any change which puts the Project into a condition which is not decent, safe, healthy and sanitary, Owner agrees, to the extent of any insurance proceeds received by Owner, to make or cause to be made full repair of said damage and to restore the Project to its original condition or to clear and remove from the Project all debris resulting from said damage. Owner agrees that preliminary steps towards performing repairs, restoration or replacement of the Project shall be commenced within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

Section 12. Operating Budget.

On or before the first (1st) day of each fiscal year Owner will submit an operating budget ("Operating Budget") for that fiscal year to City which Operating Budget shall be subject to the prior approval of City before being finally adopted by Owner. The Operating Budget shall include all necessary operating expenses including but not limited to any anticipated withdrawals from the Replacement Reserve and Contingency Account (as such terms are defined below), current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues available to pay such expenses and reserve fund deposits. The expenses incurred and disbursement shall not exceed the total amount of expenses identified in the Operating Budget as approved by the City provided, however, that nothing in this paragraph shall be construed to require the prior approval of the City with respect to increases or decreases in individual line items in the Operating Budget so long as the total amount of the Operating Budget is not exceeded.

Section 13. Project Operating Account.

Owner will establish and maintain a special account to be known as the project operating account in a financial institution whose deposits are insured by an agency of the United States of America including but not limited to Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of this Project. Expenditures shall be made from this account only in accordance with the Operating Budget submitted to and approved by the City.

Section 14. Replacement and Operating Reserve Accounts.

Owner shall establish and maintain a reserve account for replacements ("Replacement Reserve") and a reserve account for operating contingencies ("Contingency Account"). Payments to the Replacement Reserve and the Contingency Account shall be made monthly by Owner in such amounts as are reasonably determined by the Board of Directors to be prudent based on capital replacement reserve studies and projected Project operating costs and revenue, but in no event less than a total of \$4,000 per month.

The Replacement Reserve and Contingency Account, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the Owner. Disbursements from such account, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the Project or for any other purpose, may be made by the Owner to satisfy either the physical or financial needs of the Project, provided, however, that any disbursement in excess of the amount approved by City in the Operating Budget for this line item may be made only with prior written consent of City which consent shall not be unreasonably withheld.

Section 15. Annual Financial Report.

Within one hundred twenty (120) days following the end of each fiscal year or at such other interval or intervals as may be mutually agreed upon by City and Owner, Owner shall furnish City with a complete annual financial report based upon an examination of the books and records of the Project.

This report shall be prepared and certified by an independent Certified Public Accountant.

Section 16. Senior Occupancy.

Except for two (2) staff units and three (3) guest rooms, all units in the Project shall be occupied or held available for occupancy by households containing "elderly" or "senior citizen" residents in compliance with applicable provisions of law, including: (i) provisions of the Unruh Act, including California Civil Code Sections 51.2, 51.3 and 51.4, which relate to the requirements for lawful senior housing; and (ii) provisions of the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing.

Section 17. Tenant Preferences.

Owner agrees that all dwelling units in the Project will be rented in accordance with the following priorities; (i) present residents of the City of Milpitas, (ii) parents of present residents of the City of Milpitas, and (iii) residents of Santa Clara County other than those residing in the City of Milpitas.

Section 18. Income and Rent Restrictions.

(a) For a term of fifty-five (55) years commencing on the date of this Agreement, at least twenty-five (25) units in the Project shall be rented to extremely low income senior citizen households with household incomes at or below thirty percent (30%) of median income in Santa Clara County, adjusted for household size. Monthly rents for these households, including an allowance for utilities paid by the tenant, shall not exceed one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of thirty percent (30%) of Santa Clara County median income, adjusted for a household size of two (2) persons.

(b) For a term of fifty-five (55) years commencing on the date of this Agreement, the remaining rental units in the Project shall be rented to very low income senior citizen households with household incomes at or below fifty percent (50%) of median income in Santa Clara County, adjusted for household size. Monthly rents for these households, including an allowance for utilities paid by the tenant, shall not exceed the lesser of the market rent or one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of fifty percent (50%) of Santa Clara County median income, adjusted for a household size of two (2) persons.

Section 19. Management.

Owner covenants and agrees to engage an independent professional property management firm for the purpose of managing the Project.

Section 20. Payment for Services.

Neither Owner nor its agents shall make any payment for services, supplies, or materials unless such services are actually rendered for the Project or such supplies or materials are delivered to the Project and are reasonably necessary for its operation. Payments for such services or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

Section 21. Rights of Inspection.

The Project premises, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the City and its duly authorized agents. Owner and its agents shall retain copies of all written contracts or other instruments which affect the premises, all or any of which may be subject to inspection and examination by the City and its duly authorized agents.

Section 22. Surplus Cash Account.

(a) Owner shall establish and continue to maintain for the entire term of this Agreement a surplus cash account. Surplus Cash shall be defined as any cash remaining after the payment of:

(i) All sums due or currently required to be paid by Owner under the terms of any deed of trust or mortgage encumbering the Project so long as said deed of trust or mortgage has been approved in writing by the City pursuant to Section 2 of this Agreement.

(ii) All amounts required to be deposited in the Replacement Reserve and Contingency Account.

(iii) All other obligations relating to the operation of the Project unless said sums have been previously set aside in another account.

(b) Disbursements from this account may be made only with the prior written approval of the City.

(c) Upon thirty (30) days' prior written notice from City, Owner shall disburse all or any portion of said account either to the City or the City's designee.

Section 23. Condemnation.

Any proceeds payable as a result of a taking or damage to all or any part of the Project premises or the Property by reason of the power of eminent domain, whether by condemnation proceeding or otherwise, or any transfer of all or any part of the Project premises made in avoidance of the exercise of the power of eminent domain shall be immediately paid either to the City or the City's designee.

Section 24. Entry and Inspection.

City reserves and shall always have the right upon the giving of reasonable advance written notice to enter the Project premises for the purpose of viewing and ascertaining the condition of the same and to inspect the operations conducted thereon. In the event that the entry or inspection of City discloses that the Project premises are not in a decent, safe, healthy and sanitary condition, City shall have the right but not the obligation, after thirty (30) days' written notice to Owner, to have any necessary maintenance work done for and at the expense of Owner and Owner hereby agrees to pay promptly all costs incurred by City in having such necessary maintenance work done in order to keep the premises in a decent, safe, healthy and sanitary condition.

Section 25. Remedies of City Upon Default of Owner.

Upon a violation of any of the provisions of this Agreement by Owner, the City may give written notice, thereof, to Owner, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the City, be designated by the Owner as the legal business address. If such violation is not corrected to the satisfaction of the City within thirty (30) days after the date such notice is mailed or within such further time as the City determines is necessary to correct the violation, without further notice the City may declare a default ("Default") under this Agreement effective on the date of such declaration of Default and upon such Default the City may:

(1) If the City holds a note secured by the Project, declare the whole of said indebtedness immediately due and payable and proceed with a foreclosure action.

(2) If there is a note secured by the Project and said note is not held by the City, notify the holder of the note of such default and request holder to declare a default under the note and deed of trust, and holder after receiving such notice and request, shall declare the whole indebtedness due, and thereupon proceed with either foreclosure or assign the note and deed of trust to the City.

(3) Collect all rents and charges in connection with the operation of the Project and use such collections to pay the Owner's obligations under this Agreement and under any note and deed of trust, approved by the City, and the necessary expenses of preserving the property and operating the Project.

(4) Take possession of the Project, bring any action necessary to enforce any rights of the Owner growing out of the Project operation, and operate the Project in accordance with the terms of this Agreement until such time as the City in its sole discretion determines that the Owner is again in a position to operate the Project in accordance with the terms of this Agreement.

(5) Apply to any court of competent jurisdiction for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the City arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The remedies provided by this Section are not exclusive and shall be cumulative to all other rights and remedies possessed by the City, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which the City may be entitled under the law of the State of California.

Section 26. Notices.

All notices provided for or permitted to be given pursuant to this Agreement must be in writing and may be given or served by depositing the same in the United States mail, addressed to the party to be notified, postpaid, and registered or certified with return receipt requested or by delivering such notice in person to such party. Notices given or served pursuant hereto shall be effective upon personal delivery or deposit in any regular United States mail depository, as the case may be. All notices to be sent to the parties hereto shall be sent to or made at the following address:

CITY: City of Milpitas
 455 E. Calaveras Blvd.
 Milpitas, CA 95035
 Attn: City Manager

OWNER: Terrace Gardens, Inc.
 186 Beresford Ct.
 Milpitas, CA 95035
 Attn: President

By giving to the other parties at least ten (10) days' written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 27. Governing Law.

This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

Section 28. Entire Agreement.

This Agreement amends, restates, and supersedes the Original Regulatory Agreement and contains the entire Agreement between the parties with respect to the operation of the Project. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements, if any, between the parties relative to the subject matter hereof shall be superseded hereby and shall be of no further force and effect.

Section 29. Severability.

If any provision of the Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

Section 30. Terminology.

All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice-versa. Titles of paragraphs are for convenience only, and neither limit nor amplify the provisions of the Agreement itself.

Section 31. Counterparts.

This Agreement maybe signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 32. Successors Bound.

This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent Owners of the Project or any interest therein, and the City and its successors and assigns so long as the Project remains in operation.

Section 33. Waiver.

The waiver by the City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach of the same or any other term, covenant or condition herein contained. Failure on the part of the City to require or exact full and complete compliance with any of

the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof and shall not prevent City from enforcing any provision hereof.

Section 34. Conflict of Interest.

No officer or director of the Owner shall have any financial interest in any contractual arrangement entered into by the Owner in connection with the rendition of services, the provision of goods or supplies, management of the Project, procurement of furnishings and equipment, construction of the Project, procurement of the Property or other matters whatsoever.

Section 35. Attorney's Fees and Costs.

Should any legal action be commenced for the enforcement or interpretation of any provision of this Agreement, or for damages for the breach of any representation or warranty given in connection herewith, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to such further relief to which it may be entitled.

Section 36. Recordation.

This Agreement shall be duly recorded in the office of the County Recorder of Santa Clara County.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY:

CITY OF MILPITAS, a municipal corporation

By: _____

Title: _____

By: _____

Title: _____

OWNER:

TERRACE GARDENS, INC., a California nonprofit public benefit corporation

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT A
Legal Description of Property

ORIGINAL

K 431 PAGE 72

9583928

WHEN RECORDED RETURN TO:
City of Milpitas
Attn: City Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035

REC FEE	24
RMF	27
MICRO	1
LIEN	
SMFF	
PCOR	

Recorded at the request of
COMMONWEALTH LAND TITLE CO.
JAN 28 1988
JAN 28 1988 8:00 A.M.

LAURIE KANE, Recorder
Santa Clara County, Official Recorder

INSURED

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (the "Agreement") dated as of November 17, 1987, by and between Terrace Gardens, Inc., a California Nonprofit Public Benefit Corporation (the "Owner"), and the City of Milpitas, a Municipal Corporation, (the "City").

W I T N E S S E T H :

WHEREAS, the Owner will develop a 150-unit multifamily rental housing project located in the City of Milpitas, County of Santa Clara, California, at the site described on Exhibit "A" hereto, and known as Terrace Gardens (the "Project"); and,

WHEREAS, the entire capital cost of the Project will be funded by the City acting by and through its Redevelopment Agency from the Tax Allocation Bond Issue of 1985; and,

WHEREAS, the Site (the "Site") upon which the Project will be constructed is currently owned by the City; and,

WHEREAS, said Site will be conveyed/ ^{pursuant to Govt. Code Section 37364} by the City to the Owner by Grant Deed executed and recorded concurrently with the execution and recordation of this Agreement; and,

WHEREAS, the City is unwilling to provide assistance to the Owner unless the Owner shall, by entering into this Agreement consents to be regulated in accordance with terms and conditions deemed appropriate by City; and,

WHEREAS, the City intends to monitor the Owner's compliance with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

Section 1. Permitted Use.

The Site is being conveyed to Owner only for the purpose of constructing and operating the Project and for such other related or incidental purposes as may first be approved in writing by the City and for no other purpose.

Section 2. Prohibition Against Encumbrances.

Notwithstanding anything to the contrary herein, Owner may not encumber its interest in either the Site or the Project by deed of trust, mortgage or any similar security device without first obtaining the prior written consent of the City.

Section 3. Prohibition Against Sale or Assignment.

Owner shall not have the right to sell, convey, assign, or otherwise transfer its interest in either the Site or the Project without first obtaining the prior written approval of the City.

Section 4. Compliance with Law.

Owner agrees, at its sole cost and expense to comply with and secure compliance with all of the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the construction of the Project, or the operations conducted thereon, and to observe faithfully and secure compliance with, in the use of the Project, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force.

Owner agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Owner or the Project, including the land and any building, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Owner or by reasons of the business or other activities of Owner upon or in connection with the Project.

Section 5. Condition of Construction and Bond.

Owner intends to enter into a construction contract with Sakura Construction Co., a licensed general contractor (the "Contractor"), in connection with the construction of the Project. Owner agrees to obtain from said Contractor prior to execution of the final construction contract separate faithful performance and labor and material payment bonds issued by a reputable financial institution to assure completion of the Project. Each bond shall be in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed provided, however, that Owner shall be authorized to enter into a separate agreement with the Contractor covering pre- moisturization of the Site, grading and utility work in an amount not to exceed \$413,588 prior to obtaining said bonds.

Section 6. Indemnity.

Owner agrees that City together with all persons affiliated with City including but not limited to its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the goods, properties or effects of Owner, nor for personal injuries to, or resulting from any acts or omission of Owner or its sublessees in or about

the Project premises, or any act or omission of any person or from any defect in any part of the Project. Owner agrees to indemnify and hold harmless the City, its agents, officers, and employees against any of the foregoing alleged liabilities and any reasonable costs and expenses incurred by City on account of any claim or claims therefor, unless such claims costs or liabilities were caused by any act or omission, negligence or willful misconduct of the City, its agents, officers and employees.

Owner shall pay or cause to be paid the total cost and expense of all work of improvement, as that phrase is defined in the Mechanic's Lien Law in effect at the place of construction when the work begins. Owner shall not suffer or permit to be enforced against the premises or any part of it any mechanic's, materialman's, contractor's, or subcontractor's lien arising from any work of improvement, or stop notice. Owner may in good faith and at Owner's own expense contest the validity of any such asserted lien claim, or demand, provided Tenant has furnished the bond required in California Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the premises from the effect to such a lien claim.)

Owner shall defend and indemnify City against all liability and loss arising out of work performed on the premises by Owner, together with reasonable attorney's fees and all costs and expenses incurred by City in negotiating, settling, defending, or otherwise protecting against such claims.

Section 7. Insurance Coverage.

(i) Upon recordation of the deed conveying the Site to the Owner and so long as Owner retains title to the Site and the improvements thereon, including the construction period, Owner agrees to procure and maintain public liability insurance at its sole cost which names the City as an additional insured, with an insurance company or companies licensed to do business in California, to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Owner, its sublessees or any person acting for Owner or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of Owner or its sublessees, or any person for Owner, or under its control or direction. Said insurance shall be primary insurance. Such public liability and property damage insurance shall also provide for and protect City against incurring any legal cost in defending claims for any alleged loss. Said insurance shall cover and include the Indemnification provisions set out in Section 6 herein. Such public liability and property damage insurance shall be maintained in full force and effect at all times with a combined single limit of not less than \$5,000,000. Owner agrees to submit a policy of said insurance or certificate evidencing the existence thereof to the City on or before the recordation of the deed to the Site indicating full coverage of the contractual liability imposed by

this Agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days prior written notice thereof to City. If the operation of the Project by Owner results in an increased or decreased risk, in the reasonable judgment of the City, then Owner agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City. Owner agrees that provisions of this Paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Owner may be held responsible for the payment of damages to persons or property resulting from Owner's activities, the activities of its sublessees or the activities of any person or persons for which Owner is otherwise responsible.

(ii) Owner also agrees to procure and maintain during the entire term of its ownership of the Project, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the Site. Said policy shall name the City as an additional insured and shall be written by an insurance company licensed to transact business in the State of California, and shall be in an amount sufficient to cover the insurable value of the Project as determined by the City. Owner agrees to submit a certificate of said policy to the City on or before conveyance of the Site to the Owner. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to City by the insurance company. Owner agrees to pay the premium for such insurance and shall require that any insurance

proceeds resulting from a loss under said policy are payable jointly to City and Owner and said proceeds shall, subject to the terms of any mortgage encumbering the Project, be payable into a trust fund to be reinvested in rebuilding or repairing the damaged property.

(iii) In the event of damage or destruction to the Project and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be used to restore the premises to a neat, clean and safe condition. The balance of the proceeds of such insurance policy shall be either paid directly to the City or disbursed in accordance with instructions from the City.

(iv) Owner shall procure and keep in force in form and coverage reasonably satisfactory to City: (a) boiler and machinery insurance if at any time or from time to time such equipment is located on the premises; (b) other insurance, in amounts from time to time reasonably required by City, against other insurable risks, if at the time they are commonly insured against for premises similarly situated and containing comparable improvements.

(v) Owner agrees to increase the limits of liability when the value of the improvements covered is increased, subject to the availability of such insurance at such increased limits.

(vi) Owner agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the Project premises, buildings and appurtenances.

(vii) If Owner fails or refuses to procure or to maintain insurance as required by this Agreement or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right but not the obligation, at City's election and without notice, to procure and maintain such insurance. The premiums paid by City shall constitute an obligation of the Owner to the City and shall be payable upon demand. The failure of Owner to make said payment shall constitute a default under this Agreement.

Section 8. Indemnification During Construction Period.

Owner agrees to hold City free and harmless, indemnify it against all claims for labor and materials in connection with construction of the improvements, repairs or alterations to the premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the Site by other than City, and a lien is filed, Owner agrees to file with City within ten (10) business days thereafter a bond or other evidence reasonably acceptable to City to Owner's ability to pay in full all claims of all persons seeking relief under the lien. Any such bond shall be acknowledged by Owner as principal and by a corporation satisfactory to City licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

Section 9. Maintenance.

Owner agrees to assume full responsibility for the operation and maintenance of the Project. Owner agrees to maintain and

preserve the Project and any improvements thereon in a decent, safe, healthy and sanitary condition and in compliance with all applicable laws. Owner agrees to perform any repairs and replacements necessary to maintain the Project in such condition and in a manner satisfactory to City. Owner agrees that City shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with the Project.

Section 10. Nondiscrimination.

Owner agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin or physical handicap in connection with the construction or operation of the Project, including but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

Section 11. Utility Costs.

Owner agrees to order, obtain and pay for all utilities and services and installation charges in connection with the Project.

Section 12. Waste, Damage or Destruction.

Owner agrees to give notice to City of any fire or other damage that may have occurred on the Site within ten (10) days of such fire or damage. Owner agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Project clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to City. If the Project shall be damaged by any

change which puts the Project into a condition which is not decent, safe, healthy and sanitary, Owner agrees, to the extent of any insurance proceeds received by Owner, to make or cause to be made full repair of said damage and to restore the Project to its original condition or to clear and remove from the Project all debris resulting from said damage. Owner agrees that preliminary steps towards performing repairs, restoration or replacement of the Project shall be commenced within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

Section 13. Operating Budget.

On or before the first day of each fiscal year Owner will submit an operating budget for that fiscal year to City which budget shall be subject to the prior approval of City before being finally adopted by Owner. The budget shall include all necessary operating expenses including but not limited to any anticipated withdrawals from the Replacement Reserve and Contingency Account, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the Project; and shall show the expected revenues to pay such expenses and reserve fund deposits. The expenses incurred and disbursements shall not exceed the total amount of the budget as approved by the City provided, however, that nothing in this paragraph shall be construed to require the prior approval of the City with respect

to increases in individual line items in the budget so long as the total amount of the budget is not exceeded.

Section 14. Project Operating Account.

Owner will establish and maintain a special account to be known as the project operating account in a financial institution whose deposits are insured by an agency of the United States of America including but not limited to Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of the Project. Expenditures shall be made from this account only in accordance with the operating budget submitted to and approved by the City.

Section 15. Replacement Reserve and Contingency Account.

Owner shall establish a reserve account for replacements and other project contingencies. Payments to this account shall commence on the first day of third calendar month following the month in which certificate of occupancy are issued for all units in the Project in an amount equal to \$4,000 per month.

Such account, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the Owner. Disbursements from such account, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the Project or for any other purpose, may be made by the Owner to satisfy either the physical or financial needs of the project, provided, however, that any disbursement in excess of the amount approved by City in the

Operating Budget for this line item may be made only with the prior written consent of City which consent shall not be unreasonably withheld.

Section 16. Annual Financial Report.

Within 120 days following the end of each fiscal year or at such other interval or intervals as may be mutually agreed upon by City and Owner, Owner shall furnish City with a complete annual financial report based upon an examination of the books and records of the Project.

This report shall be prepared and certified to by an independent Certified Public Accountant.

Section 17. Restrictions on Occupancy.

Owner will restrict occupancy in the Project to elderly persons. For purposes of this Agreement an elderly person shall be defined as any person married or single, 62 years of age or more. In the case of a married couple, the occupancy requirements of this paragraph shall be satisfied so long as either spouse is at least 62 years of age.

Section 18. Tenant Preferences.

Owner agrees that all dwelling units in the Project will be rented in accordance with the following priorities; (i) present residents of the City of Milpitas, (ii) parents of present residents of the City of Milpitas, and (iii) residents of Santa Clara County other than those residing in the City of Milpitas, provided, however, that all tenant preferences will be subject to a graded rent system that will assure adequate revenue to the Project.

Section 19. Restrictions on Rent.

The rental income charged for each dwelling unit in the Project shall be based upon the income of the occupant or occupants (the "Occupant") of the units.

Rental income for each unit shall not exceed thirty per cent (30%) of the Occupant's gross monthly income less an Owner determined allowance for utility charges paid directly by the Occupant. Subject to the mutual consent of both City and Owner, monthly rent for all units in the Project may be adjusted either above or below the 30% level but in no event shall the rent exceed the Fair Market Rent as determined by Owner.

Section 20. Management.

Owner covenants and agrees to engage an independent professional property management firm for the purpose of managing the Project.

Section 21. Payment for Services.

Neither Owner nor its agents shall make any payment for services, supplies, or materials unless such services are actually rendered for the Project or such supplies or materials are delivered to the Project and are reasonably necessary for its operation. Payments for such services, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

Section 22. Rights of Inspection.

The Project premises, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all

other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the City and its duly authorized agents. Owner and its agents shall retain copies of all written contracts or other instruments which affect the premises, all or any of which may be subject to inspection and examination by the City and its duly authorized agents.

Section 23. Surplus Cash Account.

(i) Owner shall establish and continue to maintain for the entire term of this Agreement a surplus cash account. Surplus Cash shall be defined as any cash remaining after the payment of:

(1) All sums due or currently required to be paid by Owner under the terms of any deed of trust or mortgage encumbering the Project so long as said deed of trust or mortgage has been approved in writing by the City pursuant to Section 2 of this Agreement.

(2) All amounts required to be deposited in the Replacement Reserve and Contingency Account.

(3) All other obligations relating to the operation of the Project unless said sums have been previously set aside in another account.

(i) Disbursements from this account may be made only with the prior written approval of the City.

(ii) Upon thirty (30) days prior written notice from City, Owner shall disburse all or any portion of said account either to the City or the City's designee.

Section 24. Condemnation.

Any proceeds payable as a result of a taking or damage to ~~all or any part of the Project premises or the Site by reason of~~ the power of eminent domain, whether by condemnation proceeding or otherwise, or any transfer of all or any part of the Project premises made in avoidance of the exercise of the power of eminent domain shall be immediately paid either to the City or the City's designee.

Section 25. Entry and Inspection.

City reserves and shall always have the right upon the giving of reasonable advance written notice to enter the Project premises for the purpose of viewing and ascertaining the condition of the same and to inspect the operations conducted thereon. In the event that the entry or inspection of City discloses that the Project premises are not in a decent, safe, healthy and sanitary condition, City shall have the right but not the obligation, after thirty (30) days written notice to Owner, to have any necessary maintenance work done for and at the expense of Owner and Owner hereby agrees to pay promptly all costs incurred by City in having such necessary maintenance work done in order to keep the premises in a a decent, safe, healthy and sanitary condition.

Section 26. Remedies of City Upon Default of Owner

Upon a violation of any of the provisions of this Agreement by Owner, the City may give written notice, thereof, to Owner, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the City, be designated by

the Owner as the legal business address. If such violation is not corrected to the satisfaction of the City within thirty (30) days after the date such notice is mailed or within such further time as the City determines is necessary to correct the violation, without further notice the City may declare a default under this Agreement effective on the date of such declaration of default and upon such default the City may:

(1) If the City holds a note secured by the Project - declare the whole of said indebtedness immediately due and payable and the proceed with a foreclosure action.

(2) If there is a note secured by the Project and said Note is not held by the City - notify the holder of the note of such default and request holder to declare a default under the note and deed of trust, and holder after receiving such notice and request, shall declare the whole indebtedness due, and thereupon proceed with either foreclosure or assign the note and deed of trust to the City.

(3) Collect all rents and charges in connection with the operation of the Project and use such collections to pay the Owner's obligations under this Agreement and under any note and deed of trust, approved by the City, and the necessary expenses of reserving the property and operating the Project.

(4) Take possession of the Project, bring any action necessary to enforce any rights of the Owner growing out of the Project operation, and operate the Project in accordance with the terms of this Agreement until such time as the City in its sole discretion determines that the Owner is again in a position to

operate the Project in accordance with the terms of this Agreement.

(5) Apply to any court of competent jurisdiction for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the City arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The remedies provided by this Section are not exclusive and shall be cumulative to all other rights and remedies possessed by the City, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which the City may be entitled under the law of the State of California.

Section 27. Notices.

All notices provided for or permitted to be given pursuant to this Agreement must be in writing and may be given or served by depositing the same in the United States mail, addressed to the party to be notified, postpaid, and registered or certified with return receipt requested or by delivering such notice in person to such party. Notices given or served pursuant hereto shall be effective upon personal delivery or deposit in any regular United States mail depository, as the case may be. All notices to be sent to the parties hereto shall be sent to or made at the following address:

CITY:

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: City Manager

OWNER: Terrace Gardens, Inc.
c/o City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
Attn: President

By giving to the other parties at least ten (10) days written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 28. Governing Law.

This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

Section 29. Entire Agreement.

This Agreement contains the entire Agreement between the parties with respect to the operation of the Project. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements, if any, between the parties relative to the subject matter hereof shall be superseded hereby and shall be of no further force and effect.

Section 30. Severability.

If any provision of the Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

Section 31. Terminology.

All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limit nor amplify the provisions of the Agreement itself.

Section 32. Counterparts.

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 33. Successors Bound.

This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent Owners of the Project or any interest therein, and the City and its successors and assigns so long as the Project remains in operation.

Section 34. Waiver.

The waiver by the City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, of any subsequent breach of

the same or any other term, covenant or condition herein contained. Failure on the part of the City to require or exact full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof and shall not prevent City from enforcing any provision hereof.

Section 35. Conflict of Interest.

No officer or director of the Owner shall have any financial interest in any contractual arrangement entered into by the Owner in connection with the rendition of services, the provision of goods or supplies, management of the Project, procurement of furnishings and equipment, construction of the Project, procurement of the Site or other matters whatsoever.

Section 36. Attorney's Fees and Costs.

Should any legal action be commenced for the enforcement or interpretation of any provision of this Agreement, or for damages for the breach of any representation or warranty given in connection herewith, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to such further relief to which it may be entitled.

Section 37. Recordation.

This Agreement shall be duly recorded in the office of the County Recorder of Santa Clara County concurrently with the recordation of the grant deed conveying title to the Site from the City to Owner.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY:

City of Milpitas, a
Municipal Corporation

By: Robert Livingston

Title: Mayor, City of Milpitas

By: Pete M. Hammer

Title: Chairman, Redevelopment Agency

OWNER:

Terrace Gardens, Inc., a
California Nonprofit Public
Benefit Corporation

By: Robert Livingston

Title: President, Terrace Gardens
Board of Directors

ACKNOWLEDGEMENT BY CITY CLERK UNDER CALIFORNIA GOVERNMENT CODE SECTION 40814 & CC 1181

CITY OF MILPITAS
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

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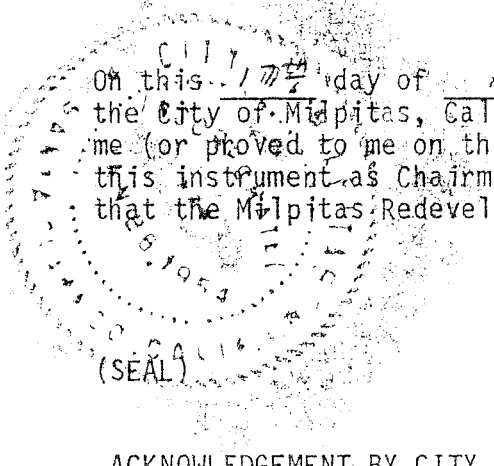
On this 17th day of November, 1987 before me, Gail Ranney, City Clerk of the City of Milpitas, California, personally appeared Robert Livengood personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Mayor of the City of Milpitas and acknowledged to me that the City of Milpitas executed it.

 (SEAL)
Gail Ranney
Gail Ranney, City Clerk

ACKNOWLEDGEMENT BY CITY CLERK UNDER CALIFORNIA GOVERNMENT CODE SECTION 40814 & CC 1181

CITY OF MILPITAS
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

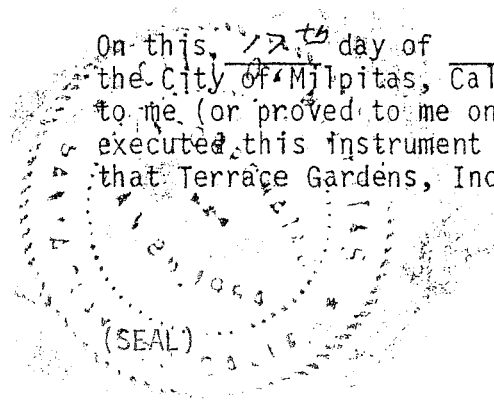
On this 17th day of November, 1987 before me, Gail Ranney, City Clerk of the City of Milpitas, California, personally appeared Peter M. Hamer personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Chairman of the Milpitas Redevelopment Agency and acknowledged to me that the Milpitas Redevelopment Agency executed it.

 (SEAL)
Gail Ranney
Gail Ranney, City Clerk

ACKNOWLEDGEMENT BY CITY CLERK UNDER CALIFORNIA GOVERNMENT CODE SECTION 40814 & CC 1181

CITY OF MILPITAS
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

On this 17th day of November, 1987 before me, Gail Ranney, City Clerk of the City of Milpitas, California, personally appeared Robert Livengood personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as President of Terrace Gardens, Inc. and acknowledged to me that Terrace Gardens, Inc. executed it.

 (SEAL)
Gail Ranney
Gail Ranney, City Clerk